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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 848. 97.

MICHAEL F. DOOLEY, AS RECEIVER OF THE FIRST NATIONAL BANK OF WILLIMANTIC, CONNECTICUT, PLAINTIFF IN ERROR,

vs.

JAMES PEASE.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED JULY 14, 1899.

(17,462.)

12914

(17,462.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 348.

MICHAEL F. DOOLEY, AS RECEIVER OF THE FIRST NATIONAL BANK OF WILLIMANTIC, CONNECTICUT, PLAINTIFF IN ERROR,

vs.

JAMES PEASE.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 12, 1900.

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a *Transcript of Record.*

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1897.

MICHAEL F. DOOLEY, as Receiver of the First National Bank of Willimantic, Connecticut, Plaintiff in Error,
vs.
JAMES PEASE, Defendant in Error.
} No. 472.

Mr. Hiram T. Gilbert, counsel for plaintiff in error.
Mr. A. W. Green, Mr. Henry S. Robbins, counsel for defendant in error.

In error to the circuit court of the United States for the northern district of Illinois, northern division.

Transcript of record filed December 15, 1897. Printed record filed Mar. 11, 1898.

OLIVER T. MORTON, *Clerk.*

b UNITED STATES OF AMERICA,
Northern District of Illinois,
Northern Division,
} *ss:*

In the United States Circuit Court for the Northern District of Illinois, Northern Division.

MICHAEL F. DOOLEY, as Receiver of the First National Bank of Willimantic, Connecticut,
vs.
JAMES PEASE.
} 23796. Trespass.

Hiram T. Gilbert, attorney for Michael F. Dooley, receiver of the First National Bank of Willimantic, Connecticut.
Green, Robbins & Honore, attorneys for James Pease.

1 *Pleas.*

Pleas in the circuit court of the United States for the northern district of Illinois, northern division, begun and held at the United States court-room in the city of Chicago, in said district and division, before the Honorable Peter S. Grosscup, district judge of the United States for the northern district of Illinois, on Friday, the twenty-eighth day of May, in the year of our Lord one thousand eight hundred and ninety-seven, of the December term of said court, 1896, and of our Independence the one hundred and twenty-first year.

S. W. BURNHAM, *Clerk.*

MICHAEL F. DOOLEY, as Receiver of the First National Bank of Willimantic, Connecticut,
vs.
JAMES PEASE. } 23796.

Be it remembered that on this day, to wit, twenty-fifth day of June, 1895, came the plaintiff in said entitled cause, by his attorneys, and filed in the clerk's office of said court his præcipe for summons and bond for costs, which said præcipe and bond for costs are respectively in the words and figures following, to wit:

2 *Præcipe.*

UNITED STATES CIRCUIT COURT,
Northern District of Illinois, Northern Division, } *ss:*

MICHAEL F. DOOLEY, as Receiver of the First National Bank of Willimantic, Connecticut,
vs.
JAMES PEASE. } Trespass. Damages, $50,000.

To the clerk of said circuit court:

You will please issue a summons in the above-entitled cause directed to the marshal of the northern district of Illinois, to execute and returnable to the October term of said court.

DUNCAN & GILBERT,
Plaintiff's Attorneys.

(Endorsed:) Filed June 25, 1895. S. W. Burnham, clerk.

Bond for Costs. Filed June 25, 1895.

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

Circuit Court, July Term, A. D. 1895.

MICHAEL F. DOOLEY, as Receiver of the First National Bank of Willimantic, Connecticut,
vs.
JAMES PEASE. } In Trespass.

I enter myself security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by the plaintiff hereby agree and stipulate that execution may issue against my

property for all costs not exceeding two hundred dollars taxed against the plaintiff.

Dated this 25th day of June, A. D. 1895.

HIRAM T. GILBERT.

(Endorsed:) Filed June 25, 1895. S. W. Burnham, clerk.

3 On the same day, to wit: the twenty-fifth day of June, 1895, came the plaintiff in said entitled suit, by his attorneys, and filed in the clerk's office of said court his declaration, which said declaration is in the words and figures following, to wit:

Declaration. Filed June 25, 1895.

Declaration.

CIRCUIT COURT OF THE UNITED STATES, } ss:
Northern District of Illinois, Northern Division, }

Michael F. Dooley, as receiver of the First National Bank of Willimantic, Connecticut, who is a citizen and resident of said State of Connecticut, plaintiff, by Duncan & Gilbert, his attorneys, complains of James Pease, who is a citizen and resident of the State of Illinois, defendant, of a plea of trespass. For that the defendant on, to wit: the 20th day of May, A. D. 1895, with force and arms, etc., in the district aforesaid, seized, took and carried away the goods and chattels, to wit: the silk dress goods, lining, braid, fish lines, sewing silk, buttons, and other goods of the plaintiff, being the stock of goods then being in the store known as numbers 213 and 215 Fifth avenue in the city of Chicago, of the value of fifty thousand dollars, and converted and disposed of the same to his own use, and other wrongs to the plaintiff then and there did, against the peace of the people of the State of Illinois, and to the damage of the plaintiff of fifty thousand dollars, and therefore he brings his suit, etc.

DUNCAN & GILBERT,
Plaintiff's Attorneys.

(Endorsed:) Filed June 25, 1895. S. W. Burnham, clerk.

4 On the same day to wit: the twenty-fifth day of June, 1895, a summons issued out of the clerk's office directed against the defendant in said entitled cause, which said summons, together with the marshal's return thereon endorsed, is in the words and figures following, to wit:

Summons of. *Filed June* 25, 1895.

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA, } ss.
Northern District of Illinois, Northern Division, }

The United States of America to the marshal of the northern district of Illinois, Greeting:

We command you to summon James Pease, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of October next, to answer unto Michael F. Dooley, as receiver of the First National Bank of Willimantic, Connecticut, of a plea of trespass on the case to his damage, as is alleged, of fifty thousand dollars, and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this 25th
[SEAL.] day of June, in the year of our Lord one thousand eight hundred and 95, and of our Independence the 119th year.

S. W. BURNHAM, *Clerk.*

Marshal's Return.

I have served the within writ by reading the same to and within the presence and hearing of James Pease therein named on the 28th day of June, 1895.

J. W. ARNOLD,
U. S. Marshal.
By GEO. N. JONES, *Deputy.*

(Endorsed:) Filed June 28, 1895. S. W. Burnham, clerk.

5 Afterwards, to wit: on the ninth day of October, 1895, came the parties to the above-entitled cause, by their respective attorneys, and filed in the clerk's office of said court a certain stipulation, which said stipulation is in the words and figures following, to wit:

Stipulation. Filed Oct. 9, 1895.

Stipulation.

United States Circuit Court, Northern District of Illinois, Northern Division.

DOOLEY, Receiver, }
vs. } 23796, 738. Trespass.
JAMES PEASE. }

It is hereby stipulated by and between the parties to the above-entitled cause, by their attorneys, that the defendant shall have

up to and including October 29, 1895, in which to file his pleas herein.

DUNCAN & GILBERT,
Attorneys for Plaintiff.
GREEN, ROBBINS & HONORE,
Att'ys for Defendant.

(Endorsed:) Filed Oct. 9, 1895. S. W. Burnham, clerk.

On the same day, to wit: the eighth day of October, in the July term of said court, 1895, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, circuit judge, appears the following entry, to wit:

Order of October 8, 1895.

MICHAEL F. DOOLEY, Rec'r, vs. JAMES PEASE. } 23796.

It is stipulated and ordered that the defendant be allowed until October 29, 1895, to file pleas.

6 Afterwards, to wit: on the twenty-eighth day of October, 1895, came the parties to the above-entitled cause, by their attorneys, and filed in the clerk's office of said court a certain stipulation, which said stipulation is in the words and figures following, to wit:

Stipulation. Filed Oct. 28, 1895.

Stipulation.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

MICHAEL F. DOOLEY, Receiver, etc., vs. JAMES PEASE. } 23795, 738. Trespass.

It is hereby stipulated by and between the parties to the above-entitled cause that the above-named defendant shall plead in said cause the general issue only, and shall not be required to plead any other plea, and that said defendant may interpose under said plea of general issue any and all defences he may have to said action in all respects as though such defences, and each and all of them, had been specifically pleaded.

DUNCAN & GILBERT,
Attorneys for Plaintiff.
GREEN, ROBBINS & HONORE,
Attorneys for Defendant.

(Endorsed:) Filed Oct. 28, 1895. S. W. Burnham, clerk.

On the same day, to wit: the twenty-eighth day of October, in the July term of said court, 1895, in the record of proceedings thereof in said entitled cause before the Honorable John W. Showalter, circuit judge, appears the following entry, to wit:

Order of October 28, 1895.

MICHAEL F. DOOLEY }
vs.
JAMES PEASE. }

It appearing to the court that a stipulation has been entered into by and between the parties to this cause as follows, to wit:

It is hereby stipulated by and between the parties to the
7 above-entitled cause that the above-named defendant shall plead in said cause the general issue only, and shall not be required to plead any other plea, and that said defendant may interpose under said plea of general issue any and all defences he may have to said action in all respects as though such defences, and each and all of them, had been specifically pleaded.

Now, therefore, it is hereby ordered that in pursuance of the above stipulation the defendant shall plead in this cause the general issue only, and shall not be required to plead any other plea, and that said defendant may interpose at the trial of this cause, under said plea of general issue, any and all defences he may have to said action, in all respects as though said defences, and each and all of them, had been specifically pleaded.

On the same day, to wit: the twenty-eighth day of October, 1895, came the defendant in said entitled cause, by its attorneys, and filed in the clerk's office of said court its plea of general issue, which said plea is in the words and figures following, to wit:

Plea. Filed Oct. 28, 1895.

Plea.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

MICHAEL F. DOOLEY, Receiver, etc., }
vs. } Trespass. 23795, 738.
JAMES PEASE. }

And the said defendant, James Pease, by Green, Robbins and Honore, his attorneys, comes and defends the force and injury, when, etc., and says that he is not guilty of the said supposed trespass above laid to his charge, or any or either of them, in manner and form as the plaintiff has above thereof complained against him; and of this the said defendant puts himself upon the country, etc.

GREEN, ROBBINS & HONORE,
Attorneys for Defendant.

(Endorsed:) Filed Oct. 28, 1895. S. W. Burnham, clerk.

8 Afterwards, to wit: on the seventh day of December, 1896, came the parties to the above entitled cause by their attorneys and filed in the clerk's office of said court a certain stipulation which said stipulation is in the words and figures following, to wit:

Stipulation. Filed Dec. 7, 1896.

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division.

Circuit Court Thereof, December Term, A. D. 1896.

WILLIAM F. DOOLEY, Receiver of the First National Bank of Willimantic, Conn.,
vs.
JAMES PEASE. } Trespass. Gen. No., 23796.

It is hereby stipulated and agreed by and between the parties hereto that a jury shall be waived in the above-entitled cause, and that it may be submitted to the court to be tried without the intervention of a jury.

H. T. GILBERT, *Attorney for Plaintiff.*
GREEN, ROBBINS & HONORE,
Attorneys for Defendant.

(Endorsed:) Filed Dec. 7, 1896. S. W. Burnham, clerk.

Afterwards, to wit: on the fourth day of February, 1897, in the December term of said court, 1896, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Order of February 4, 1897.

MICHAEL F. DOOLEY, Receiver, etc.,
vs.
JAMES PEASE. } 23796. Case.

Now on this day come the parties by their attorneys, and a jury having been waived by stipulation, this cause is now submitted to the court for trial and a part of the evidence being heard when the hour for adjournment having arrived the further trial of this cause is postponed until tomorrow morning.

9 Afterwards, to wit, on the fifth day of February, 1897, in the December term of said court, 1896, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Order of February 5, 1897.

MICHAEL F. DOOLEY, Rec'v'r,
vs.
JAMES PEASE. } Case.

Now again come the parties, by their attorneys, and the trial of this cause is resumed, and the same having been heard to conclusion, together with the arguments of counsel, and the court not being sufficiently advised takes time to consider.

Afterwards, to wit, on the sixth day of March, 1897, there was filed in the clerk's office of said court an opinion by Judge Grosscup, which said opinion is in the words and figures following, to wit:

Opinion. Filed March 6, 1897.

Opinion.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, } *ss:*

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

DOOLEY
vs.
PEASE.

Opinion.

Rendered by Judge Grosscup on March 1, 1897 (orally).

I have prepared a long finding of facts, which I will not attempt to recapitulate. My conclusion in this case is due to my holding a simple proposition of law, and I can probably state it by a very short résumé of the facts.

The complainant is the receiver of a national bank that had a large claim of over two hundred thousand dollars against a silk company in Connecticut. The silk company itself was in financial difficulties and was about to fail. The president of the com-
19 pany, who was also its acting general manager, having been elected to that place some two or three years before and not having been re-elected, but continuing to act, came to Baltimore, Chicago and New York, and executed a bill of sale of their stock of goods in these cities respectively to the receiver of the bank. He knew at the time that his silk company was on the point of failing, that an application would soon be made for the appointment of a receiver, and it would go into the hands of a receiver.

The circumstances are such that this discloses a clear case of an attempt upon the part of the president and acting general manager of a company that is no longer to be a going concern, but is to be-

come and is already an insolvent concern, and is to become a defunct concern, to execute a preference in favor of one of its creditors.

I hold that in the absence of special authority conferred upon the president or general manager for that purpose by the directors, he has no power to make any such preference. The president and general manager has power to conduct the affairs of the company as a going concern, and do everything consistent with its affairs as a going concern, but when it comes to preferring creditors of a concern to be wound up, the owners of the property are the stockholders through their board of directors, and they have not by the mere election of a man to the presidency of the company authorized him to discriminate between their creditors.

There will therefore be, in addition to this special finding of facts, a general finding in favor of the defendant, the sheriff, who seized the goods under attachment writs.

(Endorsed:) Filed March 6, 1897. S. W. Burnham, clerk.

11 On, to wit: the twenty-eighth day of May, 1897, there was filed in the clerk's office of said court the following special findings:

Special Findings. Filed May 28, 1897.

Special findings.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

MICHAEL F. DOOLEY, as Receiver of the First National Bank of Willimantic, Connecticut,
vs.
JAMES PEASE, Sheriff, etc. } Trespass.

A trial by jury having been waived in this cause by stipulation in writing signed by the parties, by their attorneys, and the issues having been submitted to me for trial, I find the facts to be as follows:

1. The plaintiff is now and since the 23rd day of April, A. D. 1895, has been the receiver of the First National Bank of Willimantic, a national banking association organized under the laws of the United States, having been duly appointed as such receiver by the Comptroller of the Currency on the 23rd day of April, 1895, under and in pursuance of the laws of the United States, and said plaintiff at the time of the commencement of this suit was and still is a resident and citizen of the State of Connecticut.

2. The defendant is and ever since the first Monday of December, 1894, has been the sheriff of the county of Cook in the State of Illinois, and during all that time has been and still is a resident and citizen of said State of Illinois.

3. The Natchaug Silk Company was on the 25th day of April

1895, a corporation organized under the laws of the State of Connecticut, engaged in the business of manufacturing silk and buying and selling and dealing generally in such real and personal estate as might be necessary to the successful prosecution of said business, said corporation having been duly organized as aforesaid in the year 1887, and having carried on said business during all said time.

4. The goods in controversy in this case belonged, prior to April 25, 1895, to the Natchaug Silk Company, a Connecticut corporation.

12 5. The defendant, on May 20, 1895, was sheriff of Cook county, Illinois, and on that date levied upon, seized and took possession of the goods described in the plaintiff's declaration together with certain other goods, under a writ of attachment for the sum of $14,786.53 duly issued out of the circuit court of Cook county, Illinois, at the suit of Morimura, Arai *et al. vs.* said Silk Company, and he again levied upon said goods on May 24, 1895, under a like writ for the sum of $8,193.47, duly issued out of said circuit court at the suit of China & Japan Trading Company, Limited (a New York corporation) against said Silk Company. Each of said attachment suits was duly prosecuted to judgment and judgments were entered therein for the amount of said claims respectively and special executions were ordered issued to said sheriff in each of said suits for the amounts of said judgments against the property attached. The action of said sheriff was in all respects legal and his seizure of said goods was justifiable and proper if on May 20, 1895, said goods still belonged to said silk company or were entitled to be treated by said attaching creditors as the goods of said silk company. Said levy was made in the absence of the said H. L. Stanton, hereinafter mentioned, who returned on the following day and informed said sheriff that said stock of goods belonged to the plaintiff and that he, said Stanton, held them as agent of the plaintiff; but the said sheriff retained the said goods and no part thereof was ever returned to the plaintiff, but, on the contrary, said sheriff did, on June 10, 1895, pursuant to an order of the superior court of Cook county, Illinois, in the suit of Harold F. Haddon *et al. vs.* The Natchaug Silk Company *et al.*, turn over the possession of the goods levied upon to said Henry L. Stanton, who had, upon June 8, 1895, been appointed receiver of said goods by said court in said cause, which receiver afterwards sold said goods in the usual course of said business pursuant to the further orders of said court. The plaintiff, however, was not a party to said suit of Harold F. Haddon *et al. vs.* The Natchaug Silk Company *et al.*

6. The Natchaug Silk Company was originally organized on the 25th day of October, 1887, under the provisions of the laws of the State of Connecticut, then in force, authorizing and regulating the formation of stock corporations, and subsequently on the 12th day of June, 1889, a special act of the assembly of the State of Connecticut was passed in and by which it was declared that said Natchaug Silk Company should have and enjoy its corporate franchise and

all the rights and privileges in said act granted for the pur-
13 pose of manufacturing and dealing in all kinds of silk, cotton, mohair, wool and all articles composed wholly or in part of silk, cotton, leather, wool or other substance and to do such other things as were incident to the prosecution of said business and to exercise such mercantile powers as might be convenient and necessary for the successful prosecution of said business. Said act further provided that the stock, property and affairs of said corporation should be managed by its directors, a majority of whom, when convened in accordance with the by-laws, should constitute a board for the transaction of business, and that the president and directors should have power to appoint or employ from time to time a secretary, treasurer and such other officers, agents, mechanics and laborers as they might deem necessary and proper. The act further provided that the then existing by-laws of said corporation should continue in force until the same should be altered or repealed by a vote of the stockholders, and that said stockholders should have power to alter or repeal said by-laws and to make or establish such other by-laws, rules and regulations not inconsistent with the laws of said State or of the United States as they might deem expedient for the management of the affairs of said corporation.

The third by-law adopted by the corporation on the 29th day of October, 1887, is as follows:

"The president shall preside at all meetings of the stockholders of said company when present, and in his absence the meeting shall be called to order by the secretary and a president *pro tem.* be appointed. He shall also perform all duties especially required of him by the statute laws of this State, but his charge of the executive business of the company shall be subject to the control of the directors."

At the annual stockholders' meeting on the 3rd day of February, 1891, the following amendment to the by-laws was adopted:

"The board of directors shall annually elect a general manager, who shall have entire charge of the business and affairs of said company, subject to the order and approval of the board of directors."

The foregoing by-laws continued in force down to the time of the suspension by the corporation of its business and the appointment of its receiver.

Said two by-laws and said provisions above stated in the said act of the assembly of Connecticut are the only provisions of the charter of said corporation or of its by-laws necessary to be considered in determining the powers of its president or general manager.

7. On said 25th day of April, 1895, J. D. Chaffee was the presi-
dent and acting general manager of said corporation and had
14 been such president and acting general manager for more than two years prior thereto. Said Chaffee as such president and acting general manager had had entire charge of the current business and affairs of said corporation as a going concern and within the field of its activities as a going concern and had been

permitted by its board of directors to manage as he saw fit the said current business and affairs of said corporation as a going concern, as aforesaid, except that until about the 15th day of April, 1895, one O. H. K. Riseley, a member of the board of directors of said corporation who was likewise cashier of said First National Bank of Willimantic had had charge of the financial affairs of said corporation and the borrowing of money for said corporation, on which last-mentioned date said Risley died at Willimantic, in the State of Connecticut, which was the principal place of business of said corporation, and except that said Chaffee during the time he was president and general manager at various times consulted the directors in regard to hiring an extra office outside the mill and in regard to *hiring an extra office outside the mill and in regard to* insuring the accounts of the company in a liability insurance company and in regard to purchasing or mortgaging of real estate and in regard to the policy to be pursued when strikes arose among the employés in regard to reducing wages.

8. The said First National Bank of Willimantic had, as a national banking association aforesaid, been engaged for many years in the business of banking under the laws of the United States at Willimantic aforesaid, and continued to carry on said banking business until said 23rd day of April, 1895, on which date, it having become insolvent, said plaintiff was appointed as its receiver as aforesaid. At the time of such appointment of the plaintiff said Natchaug Silk Company was indebted to said First National Bank of Willimantic to an amount exceeding $200,000 for moneys theretofore loaned by said First National Bank of Willimantic to said Natchaug Silk Company to enable said Natchaug Silk Company to carry on its said business, no part of which said indebtedness has ever been paid.

9. Prior to or about the time of his appointment as such receiver the plaintiff requested of said Chaffee, as president and general manager of said Natchaug Silk Company, that said Natchaug Silk Company should give security for the payment of its indebtedness to said First National Bank of Willimantic, and said plaintiff then and there told said Chaffee that unless said security was given he, the plaintiff, would close said silk company up.

10. Immediately thereafter said Chaffee came to the city of Chicago, together with one Solomon Lucas, an attorney-at-law who had been employed by the plaintiff to look after the interests of said First National Bank of Willimantic, and executed in the name of said Natchaug Silk Company and delivered to said Lucas on behalf of the plaintiff a bill of sale of the goods and chattels described in the plaintiff's declaration, together with certain other goods and chattels which at the time of the execution of said bill of sale were owned by said Natchaug Silk Company, being the stock of goods owned by said Natchaug Silk Company and then in the store known as numbers 213 and 215 Fifth avenue in the city of Chicago, Illinois, which said bill of sale was and is in the words and figures following, to wit:

"Know all men by these presents, that the Natchaug Silk Company, of the town of Windham, in the county of Windham and State of Connecticut—party of the first part, for and in consideration of the sum of twenty thousand dollars, lawful money of the United States of America, to it in hand paid, at or before the ensealing and delivery of these presents, and divers other good and valuable considerations received of Michael F. Dooley, as receiver of the First National Bank of Willimantic of Connecticut of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and delivered, and, by these presents, do grant, bargain, sell and deliver unto the said party of the second part, all the following goods, chattels and property, to wit:

"The stock of goods owned by it the said Natchaug Silk Company and now in the store known as Nos. 213 and 215 Fifth avenue in the city of Chicago, in the State of Illinois, said stock of goods are silk goods and consists of dress goods, lining, braids, fish-lines, sewing silk and buttons.

"To have and to hold the said goods, chattels and property unto the said party of the second part, his heirs, executors, administrators, successors and assigns, to and for his own proper use and behoof, forever.

"And the said party of the first part do vouch itself to be the true and lawful owner of the said goods, chattels, and property and had in itself full power, good right, and lawful authority to dispose of the said goods, chattels and property, in manner, as aforesaid: And it does for itself and its successors, covenant and agree to and with the said party of the second part, to warrant and defend the said goods, chattels and property to the said party of the second part, his successors in office, and assigns, against the lawful claims and demands of all and every person and persons whomsoever.

"In witness whereof, it has hereunto set its hand and seal the twenty-fifth day of April, in the year one thousand eight
16 hundred and ninety-five by J. Dwight Chaffee, its president duly authorized in its name and behalf to execute and deliver this instrument at the city of Chicago, State of Illinois.

THE NATCHAUG SILK CO., [SEAL.]
By J. D. CHAFFEE, *Pres't.*

Sealed and delivered in the presence of—
H. L. STANTON."

At the time of the execution of said document said silk company was indebted to said attaching creditors in the amounts above specified.

11. Said store had for several years prior thereto been operated by said Natchaug Silk Company as a store for the sale to dealers of its manufactured goods through one H. L. Stanton, who down to said April 25, 1895, had acted as its agent for that purpose, and at the time said bill of sale was executed and delivered by said Chaffee to said Lucas said Chaffee directed said Lucas to have the said goods that were included in said bill of sale sold and the proceeds of such sale applied by said plaintiff as a payment upon the in-

debtedness of said Natchaug Silk Company to said First National Bank of Willimantic.

12. On the morning of April 26, 1895, an attorney employed by said plaintiff, called at said store, purported to take possession of said goods in the name of the plaintiff, employed said H. L. Stanton as agent of the plaintiff to sell said goods and remit the proceeds of such sales to the plaintiff, and took from said Stanton a receipt stating that he, said Stanton, had received said stock of goods from the plaintiff and was to hold the said stock as custodian and agent for the plaintiff and subject to the plaintiff's directions. Immediately thereafter said Stanton caused the said stock of goods to be insured in the name of the plaintiff, and opened a new set of books for the purpose of keeping an account of the sale and disposition of said goods and of the expenses of said Stanton in and about the making of such sale, and also made an inventory of the said goods and delivered the same to the said attorney for the plaintiff. From that date said Stanton understood himself to be acting solely as the agent of the plaintiff. A portion of the said stock of goods was sold by said Stanton to various persons to whom the said goods were billed in the name of the plaintiff and the proceeds of said sales amounting to about $7,000, were received by said Stanton and placed to the credit of the plaintiff. No change was made from April 25, 1895, until after May 20, 1895, in the sign on the outside of said store, which signs were "Natchaug Silk Company."

17 13. On April 26, 1895, one Frederick M. Barrows, who was a shareholder in the capital stock of said Natchaug Silk Company, filed in the superior court of the State of Connecticut his bill in chancery, praying for the appointment of a receiver of all the property, both real and personal, of said corporation, who should be authorized to take immediate possession thereof and manage and carry on the business for the benefit of the creditors and stockholders thereof, and for such other relief as might be deemed proper. And thereupon on said day said superior court, through John M. Thayer, a judge thereof, duly appointed one James E. Hayden, as receiver of all the property, estate and rights of said Natchaug Silk Company and directed him to enter into and take possession of all the property of said corporation, and to continue the business of said Natchaug Silk Company until the further order of the court. And shortly thereafter and, to wit: on the same day, said Hayden duly qualified and entered upon the discharge of his duties as such receiver and has ever since continued to act and is still acting as such receiver.

14. After the making of said bill of sale there was no change in the possession of the goods other than as above named, but they remained in the custody of the same persons who had theretofore been in charge of them for the silk company and they were apparently in the possession of the silk company so far as appeared to the public and were sold in the same way as theretofore down to the day of the attachment. There was no change in the title to or possession of said goods which was visible, open or notorious down to the date of the attachments, unless the facts hereinbefore and

hereinafter specifically stated did, as a matter of law, constitute a visible, open and notorious change of possession.

15. The Natchaug Silk Company was long prior to and during April, 1895, hopelessly insolvent and this fact was well known to Chaffee, its president.

16. When Chaffee started on his trip on April 22nd, he expected that a receiver would shortly be appointed for the corporation and he left directions with his subordinate, Barrows, looking to the possibility of the appointment of a receiver during his absence which extended over a period of about one week.

17. The giving of the supposed bill of sale to Dooley in Chicago, and the attempted transfer of the goods constituted an attempt by Chaffee in contemplation of the insolvency and liquidation of the company to give a preference to Dooley as against the other creditors of the company.

18. Chaffee was not vested with authority to make this transfer by the charter of the company nor by the by-laws, nor by any action of the board of directors, nor was his act ever ratified by the board of directors or by the company in any manner unless the facts hereinbefore and hereinafter stated as a matter of law constituted such ratification. He had never had authority vested in him at any time by the company to make this transfer or to make similar transfers unless the facts hereinbefore and hereinafter stated, as a matter of law, conferred upon him such authority. He had never made a transfer similar to this prior to starting on his trip beginning April 22, 1895, on which trip he purported to make the transfer in controversy.

19. The bank knew and Dooley knew that this act was an attempted preference on Chaffee's part in contemplation of the insolvency and liquidation of the company.

20. The directors of the silk company on being told by Lucas, who was Dooley's attorney, that it was essential that they should ratify Chaffee's act in making the supposed transfer, refused to do so and took no action whatever in regard thereto.

21. Chaffee had never during the business career of the company done any act in behalf of the company that would lead the bank or any one else to suppose that he had been given the power by the company to dispose of its assets by way of preference in case of impending dissolution.

22. The signs of the Natchaug Silk Company on the outside and inside of the store were not changed between April 24th and the time of the levy of the attachments.

23. There was nothing in the appearance of the store outside or inside to indicate that there had been any change in the title or possession to the goods on or after April 25th and until May 20th, the time of the attachment.

24. The same persons (being five or six in number) remained in the store performing, after the transfer to Dooley, apparently the same duties they had been performing prior to April 25th.

25. The salesmen were instructed not to inform the public nor customers of the transfer to Dooley and they did not do so, but all

the goods that were shipped from said store were billed to customers in the name of the plaintiff and not in the name of the silk company.

26. Orders kept coming in addressed to the Natchaug Silk Company after April 25th, for several weeks, in all respects as they had come in prior to that and these orders were appropriated and filled by Stanton out of the stock in the store.

27. The office fixtures were not attempted to be transferred
19 to Dooley but they were used in conducting the business after April 25th in all respects as before by Stanton in the sale of the goods.

28. Stanton's books of account and papers in relation to sales after April 25th, were all kept in a safe belonging to the Natchaug Silk Company and which had its name painted in large letters therein and which was standing in the store.

29. No advertisement was made of the transfer to Dooley nor was any public notice given thereof, unless as a matter of law the facts hereinbefore and hereinafter stated constituted such public notice.

30. There was nothing to inform the public that any change had taken place in the ownership or possession of the goods between April 24, 1895, and the levy of the attachment on May 20, 1895, unless as a matter of law the facts hereinbefore and hereinafter mentioned constituted sufficient information to the public of such change.

31. The change of ownership was not open or visible or notorious unless as a matter of law the facts hereinbefore and hereinafter stated constituted open or visible or notorious change of ownership.

32. After the appointment of said Hayden as receiver and on or about the 29th day of April, 1895, said Chaffee met in the office of said Natchaug Silk Company at Willimantic with all of the directors of said corporation who were then living and were within the State of Connecticut, being three in number besides himself, the entire board of directors consisting of six members of whom one, to wit: said Risley, was dead, and another was absent from the State. At said meeting said plaintiff and said Lucas were also present and said Chaffee reported to said directors present at said meeting the making of said bill of sale of said goods in Chicago to the plaintiff above mentioned and requested them to ratify the same, but said directors declined to take any action whatever in regard thereto and neither expressed an approval nor disapproval of the act of said Chaffee in making said bill of sale. On the same day said Chaffee informed said Hayden of the making of said bill of sale, but said Hayden took no action in regard thereto and neither he, said Hayden, nor the board of directors of said silk company, took any action whatever with respect to the making of said bill of sale down to the time of the levy of the writ of attachment hereinafter mentioned.

33. That in the early part of 1895, the silk company was indebted to the bank in a sum over $300,000. The company had

been long prior to that time hopelessly insolvent and this
20 fact was well known to Chaffee and to Risley who was the cashier of the bank and a director of said bank. About this time and for the purpose of obtaining credit for the company certain false and fraudulent statements as to the assets and liabilities of the silk company were made up by Risley and were sent to Hadden & Co. and to Morimura & Co., and to China & Japan Trading Co., all dealers in raw silk, for the purpose of deceiving them as to the condition of the silk company and causing them to furnish raw silk on credit to the silk company to be manufactured into goods. Said fraudulent statements indicated that the silk company was solvent. Said fraudulent statements represented that said company was about $200,000 better off than it really was. Risley well knew the amount of the indebtedness to the bank and knew that this large indebtedness rendered said company insolvent, but in said statements he falsely and fraudulently concealed such fact. Fowler was a director in the bank and a director of the silk company. Relying upon such statements said raw-silk dealers furnished raw silk to said company on credit which they would not have done unless they had been deceived by said fraudulent statements. The raw silk thus furnished was of the value of about $40,000 and was manufactured into silk goods which constituted a large part of the goods attempted to be transferred to Dooley. The entire amount of the claims of said attaching creditors was for raw silk furnished on the faith of these fraudulent statements early in 1895.

34. The damages that the plaintiff would have been entitled to recover had the issues been found by the court in his favor are shown by the evidence, but inasmuch as the issues are to be found for the defendant, the court declines to find the amount of such damages, said damages, however, exceed ten thousand dollars ($10,000).

35. That the by-laws of the silk company providing for the office of general manager, provided that such officer should be elected annually by the directors. No general manager had been elected for two years prior to April 25, 1895.

36. Said sheriff after levying the attachments hereinbefore mentioned retained possession of said goods until June 10, 1895, on which date, pursuant to an order of the superior court of Cook county, Illinois, in the said case of Harold F. Haddon, *et al.* *vs.* The Natchaug Silk Company, *et al.*, hereinbefore mentioned on the chancery side of said court, said sheriff turned over the possession of said goods to Henry L. Stanton who had by said court in said cause been appointed receiver of said goods on June 8, 1895, and
said Stanton thereafter as receiver sold said goods pursuant
21 to the orders of said court in the usual course of business, retaining for that purpose the same employés he had retained when he was selling said goods for Dooley, and selling said goods in the same manner as he had been selling them for said Dooley.

37. No deduction from or cancellation of the debt to the bank or

its receiver, Dooley, was made at the time of or by reason of the giving of said bill of sale, nor was any deduction from, or cancellation of said debt made by said Dooley in his proof of claim against the receiver of said silk company, filed April 7, 1896, on account of or by reason of the giving of this bill of sale, although he had received the sum of $7,000 out of the sale of a portion of these goods.

Upon the foregoing facts the court finds the issues for the defendant, and finds the defendant not guilty of the trespasses in said declaration charged against him.

P. S. GROSSCUP, *Judge.*

(Endorsed:) Filed May 28, 1897. S. W. Burnham, clerk.

On the same day, to wit: the twenty-eighth day of May, 1897, in the December term of said court, 1896, in the record of proceedings thereof in said entitled cause, before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Judgment, May 28, 1897.

MICHAEL F. DOOLEY, as Receiver of the First National Bank of Willimantic, Connecticut,
vs.
JAMES PEASE, Sheriff.
} 23796. Case.

It having been stipulated in writing by and between the parties to this suit that a jury should be waived and the cause submitted to the court without a jury, and the cause now coming on for trial and the court having heard the evidence and the arguments of counsel and being fully advised in the premises, doth from the evidence find the defendant, James Pease, not guilty of the trespasses or any or either of them laid to his charge in the declaration of the plaintiff, Michael F. Dooley, and thereupon it is now hereby
22 considered, ordered and adjudged by the court that the said defendant be discharged and that he go hence without day, and that he have and recover of and from the said plaintiff his costs in this behalf expended and that execution issue therefor.

Afterwards, to wit: on the seventeenth day of November, 1897, came Michael F. Dooley, receiver, &c., and filed in the clerk's office of said court his petition for writ of error, which said petition is in the words and figures following, to wit:

Petition for Writ of Error. Filed Nov. 17, 1897.

Petition for writ of error.

Circuit Court of the United States, Northern District of Illinois, Northern Division.

MICHAEL F. DOOLEY, Receiver of the First National Bank of Willimantic, Connecticut, *vs.* JAMES PEASE.	Trespass.

And now comes Michael F. Dooley, receiver of the First National Bank of Willimantic, Connecticut, the plaintiff in the above-entitled cause, and prays that a writ of error may be allowed and issued to said circuit court of the United States in and for the northern division of the northern district of Illinois, in the above-entitled cause to bring before the circuit court of appeals for the seventh circuit the final judgment and proceedings of said circuit court in the above-entitled cause.

HIRAM T. GILBERT,
Att'y for Plaintiff.

(Endorsed:) Filed Nov. 17, 1897. S. W. Burnham, clerk.

23 On the same day, to wit: the seventeenth day of November, 1897, came Michael F. Dooley, receiver, by his attorney and filed in the clerk's office of said court his assignment of error, which said assignment of error is in the words and figures following, to wit:

Assignment of Error. Filed Nov. 17, 1897.

Assignment of error.

Circuit Court of Appeals, Seventh Circuit.

MICHAEL F. DOOLEY, Receiver of the First National Bank of Willimantic, Connecticut, Plaintiff in Error, *vs.* JAMES PEASE, Defendant in Error.	Error to Circuit Court, Northern District of Illinois, Northern Division.

And now comes the above-named plaintiff in error, by his attorney, and respectfully shows to the court that in the record and proceedings of said circuit court in the above-entitled cause and in the rendition of the final judgment therein manifest error hath intervened to the injury of said plaintiff in error in this, to wit:

First. That said circuit court erred in finding the issues joined in favor of the defendant.

Second. That said circuit court erred in entering judgment in favor of the defendant upon findings of fact by said court.

Third. That said circuit court erred in not entering judgment in favor of the plaintiff upon the findings of fact made by said court in said cause.

Wherefore for these and other errors apparent in the record the said Michael F. Dooley, as receiver of the First National Bank of Willimantic, Connecticut, prays that the said judgment of said circuit court may be reversed and said cause remanded to said circuit court with directions to enter a judgment therein in favor of the plaintiff.

HIRAM T. GILBERT,
Attorney for Plaintiff in Error.

(Endorsed:) Filed Nov. 17, 1897. S. W. Burnham, clerk.

24 On the same day, to wit: the seventeenth day of November, in the July term of said court, 1897, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, district judge, appears the following entry, to wit:

Order of November 17, 1897.

MICHAEL F. DOOLEY, Receiver of the First National Bank of Willimantic, Connecticut, *vs.* JAMES PEASE.	Trespass.

This day comes the plaintiff, by Hiram T. Gilbert, his attorney, and files herein and presents to the court the petition of the plaintiff for the allowance of a writ of error herein, and on consideration whereof the court does allow the writ of error prayed for upon the said plaintiff giving a bond according to law in the sum of five hundred dollars ($500) and does order that a citation be issued herein returnable according to law.

On the same day, to wit: the seventeenth day of November, 1897, came Michael F. Dooley as receiver of the First National Bank of Willimantic as principal, and Hiram T. Gilbert, as surety, and filed in the clerk's office of said court an appeal bond, which said bond is in the words and figures following, to wit:

Appeal Bond. Filed Nov. 17, 1897.

Appeal bond.

Know all men by these presents, that we, Michael F. Dooley, as receiver of the First National Bank of Willimantic, as principal, and Hiram T. Gilbert, as surety, are held and firmly bound unto James Pease in the penal sum of five hundred ($500) dollars, for the payment of which well and truly to be made, we bind ourselves, our successors, heirs, administrators and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this 17th day of November, A. D. 1897.

The condition of the above obligation is such, that whereas on or about the 28th day of May, A. D. 1897, the circuit court of the United States, in and for the northern division of the northern district of Illinois, in a certain cause then therein pending, wherein said Michael F. Dooley, as receiver as aforesaid, was plaintiff and said James Pease was defendant, did enter a judgment in favor of the said Pease and against the said Michael F. Dooley, as receiver, as aforesaid, and the said Michael F. Dooley, as receiver, as aforesaid, has sued out and obtained a writ of error to the said circuit court of the United States to reverse the said judgment:

Now, therefore, the condition of this obligation is such that if the said Michael F. Dooley, as receiver as aforesaid, shall prosecute said writ of error to effect and answer all costs which may be awarded against him, if he fail to make good his plea, then the above obligation to be void, otherwise to remain in full force and effect.

MICHAEL F. DOOLEY,
Receiver of the First National Bank of Willimantic. [SEAL.]
HIRAM T. GILBERT. [SEAL.]

Approved:
P. S. GROSSCUP.

(Endorsed:) Filed Nov. 17, 1897. S. W. Burnham, clerk.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Michael F. Dooley, receiver of the First National Bank of Willimantic, Connecticut, plaintiff, and James Pease, a manifest error hath happened, to the great damage of the said Michael F. Dooley, receiver of the First National Bank of Willimantic, Connecticut, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the seventh circuit, together with this writ, so that you have the same in the said circuit court of
26 appeals at Chicago within thirty days from the date hereof, that the record and proceedings aforesaid, being inspected, the said circuit court of appeals may cause further to be done

therein to correct that error, what of right, and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the United States, the 17th day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

S. W. BURNHAM,
Clerk of the Circuit Court of the United States
for the Northern Dist. of Illinois.

Clerk's Certificate.

NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript (with the exception of the depositions of Darwin R. Aldridge, Harold F. Hadden, Richard V. Briesen, Henry B. Twombley, Howard Ayers, J. Dwight Chaffee, Charles Fenton, Frederick M. Barrows, Michael F. Dooley, James E. Hayden, Frank M. Wilson, H. J. Turner and certain schedules, which are omitted from the record) of all the proceedings had in said court in the cause wherein Michael F. Dooley, as receiver of the First National Bank of Willimantic, Connecticut, is the plaintiff, and James Pease, sheriff, is the defendant, as the same appear from the original records and files of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at my office in Chicago, in said district, this fourteenth day of December, 1897.

S. W. BURNHAM, *Clerk.*

27 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to James Pease, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals, for the seventh circuit, to be holden at Chicago, Illinois, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, northern division, wherein Michael F. Dooley, as receiver of the First National Bank of Willimantic, Connecticut, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Peter S. Grosscup, judge of the district court of the United States, this 17th day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

P. S. GROSSCUP, *Judge, &c.*

No. 23796. United States circuit court, northern district of Illinois, northern division. Michael F. Dooley, receiver of the First National Bank of Willimantic, *vs.* James Pease. Citation. Returnable ——, 189–. —— ——, clerk. Filed Nov. 19, 1897. S. W. Burnham, clerk.

Service of the within citation acknowledged this 17th day of November, 1897.

A. W. GREEN,
H. S. ROBBINS,
LOCKWOOD HONORE,
Attorneys for Defendant.

28 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on Monday, the fourth day of October, 1897, of the October term, in the year of our Lord one thousand eight hundred and ninety-seven, and of our Independence the one hundred and twenty-second.

And afterwards, to wit, on the sixteenth day of December, 1897, in the October term aforesaid, came the plaintiff in error, by his counsel, Mr. Hiram T. Gilbert, and filed his appearance in the office of the clerk of this court; which appearance is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1897.

MICHAEL F. DOOLEY, Receiver, etc., *vs.* JAMES PEASE. } No. 472.

The clerk will enter my appearance as counsel for the plaintiff in error.

HIRAM T. GILBERT.

Endorsed: Filed Dec. 16, 1897. Oliver T. Morton, clerk.

29 And afterwards, on the same day, to wit, on the sixteenth day of December, 1897, in the October term aforesaid, came the defendant in error, by his counsel, Mr. A. W. Green, and filed his appearance in the office of the clerk of this court; which appearance is in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1897.

MICHAEL F. DOOLEY, Receiver, etc.,
vs.
JAMES PEASE. } No. 472.

The clerk will enter my appearance as counsel for the defendant in error.

A. W. GREEN,
205 *La Salle St.*

Endorsed: Filed Dec. 16, 1897. Oliver T. Morton, clerk.

And afterwards, to wit, on the twelfth day of April, 1898, in the October term aforesaid, the following proceedings were had in said entitled cause and entered of record, to wit:

TUESDAY, *April* 12, 1898.

Before Hon. William A. Woods, circuit judge; Hon. John W. Showalter, circuit judge.

MICHAEL F. DOOLEY, Receiver, etc.,
vs.
JAMES PEASE. } 472.

30 In error to the circuit court of the United States for the northern district of Illinois, northern division.

Upon application of counsel for defendant in error, it is ordered by the court that the time allowed by the rules in which defendant in error may file his brief in this cause be, and the same is hereby, enlarged ten days.

And afterwards, to wit, on the second day of May, 1898, in the October term aforesaid, the following further proceedings were had and entered of record, to wit:

MONDAY, *May* 2, 1898.

Present: Hon. William A. Woods, circuit judge; Hon. John W. Showalter, circuit judge; Hon. Romanzo Bunn, district judge.

Order.

It is ordered by the court that Romanzo Bunn, judge of the district court of the United States for the western district of Wisconsin, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Bunn appeared and took his seat as a member of said court.

And afterwards, on the same day, to wit, on the second day of May, 1898, in the October term aforesaid, the following further proceedings were had and entered of record, to wit:

31 MONDAY, *May* 2, 1898.

Before Hon. William A. Woods, circuit judge; Hon. John W. Showalter, circuit judge; Hon. Romanzo Bunn, district judge.

MICHAEL F. DOOLEY, Receiver, etc.,
vs.
JAMES PEASE. } 472.

In error to the circuit court of the United States for the northern district of Illinois, northern division.

It is ordered by the court that this cause be, and the same is hereby, set down for hearing May 10, 1898.

And afterwards, to wit, on the tenth day of May, 1898, in the October term aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *May* 10, 1898.

Before Hon. William A. Woods, circuit judge; Hon. John W. Showalter, circuit judge; Hon. Romanzo Bunn, district judge.

MICHAEL F. DOOLEY, Receiver, etc.,
vs.
JAMES PEASE. } 472.

32 In error to the circuit court of the United States for the northern district of Illinois, northern division.

Now this day come the parties, by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel and on oral argument by Mr. Lockwood Honore, counsel for defendant in error, and the court not now being sufficiently advised takes this matter under consideration.

And afterwards, to wit, on the twenty-sixth day of July, 1898, there was filed in the office of the clerk of this court the opinion of the court; which opinion is in the words and figures following, to wit:

33 In the United States Circuit Court of Appeals for the Seventh Circuit, May Session, A. D. 1898.

MICHAEL F. DOOLEY, as Receiver of the First National Bank of Willimantic, Connecticut,
vs.
JAMES PEASE. } No. 472. In Error to the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

Before Woods and Showalter, circuit judges, and Bunn, district judge.

WOODS, circuit judge, delivered the opinion of the court:

This was an action of trespass by the plaintiff in error, Michael F. Dooley, as receiver of the First National Bank of Willimantic,

Connecticut, against the defendant in error, James Pease, charging him with having forcibly seized and carried away a stock of goods in store at numbers 213 and 215 Fifth avenue, in the city of Chicago. The defendant pleaded the general issue, under which it was agreed that all defenses of whatever nature might be proved as if specially pleaded, and by stipulation in writing a jury was waived and
34 the court made a special finding of facts, upon which it pronounced the defendant not guilty, and gave judgment accordingly. Error is assigned to the effect that the judgment is not supported by the facts found.

The special finding is made of great length by the statement of many facts which, though relevant and important, are evidentiary only of the ultimate facts found. For the present purpose a short statement will be sufficient. At the time of the alleged trespass, May 20, 1895, the defendant, Pease, was the sheriff of Cook county, Illinois. He seized the goods by virtue of a writ of attachment, for the sum of $14,786.53, issued out of the circuit court of Cook county, against the Natchaug Silk Company, a corporation of Connecticut, and four days later he levied on the goods another attachment out of the same court against the same company for a sum exceeding $8,000.00. The validity of the writs under which the seizure was made is not questioned. The dispute is over the ownership of the goods at the time of the seizure. They had belonged to the attachment defendant, The Natchaug Silk Company, prior to and on April 25, 1895, and the point of dispute is whether the instrument of sale that day executed in the name of the company by its president was valid and effective to transfer title to the plaintiff in error as receiver of the First National Bank of Willimantic, Connecticut. The validity of that instrument is denied on several grounds. The first is that the president of the company was without authority to make the sale. Upon this point the court found, as a fact, and also as a matter of legal conclusion, that the president of the company had no authority to make the sale, and seems to have placed its decision of the case mainly upon that ground. It is insisted that certain facts specifically stated in the finding require the contrary conclusion. The facts chiefly relied on are, that the president of the company had also been made its general manager; that as president he was empowered by a by-law of the corporation to "perform all duties especially required of him by the statute laws of this State (Connecticut) but his charge of the executive business of the company shall be subject to the control of the directors;" and that by an amendment of the by-laws a general manager was to be chosen annually who should "have entire charge of the business and affairs of the said company, subject to the order and approval of the board of directors." On the authority of Hadden *v.* Dooley, 38 U. S. App., 651; 20 C. C. A., 494; Scudder *v.* Anderson, 54 Mich., 122, and especially of Lewis *v.* Hartford Silk Mfg. Co., 56 Conn., 25, it is insisted that the power of general management so given to the president of the company included the power to pay the debts of the company by the application of any portion or all of its personal property.
35 Manifestly, however, such a question is not one of law purely, but also of fact, dependent upon the circumstances of each

case. The cases mentioned, it is to be assumed, were decided correctly upon the proofs adduced. In this case the court found the fact to be that the sale was unauthorized and had never been ratified by the company; and there are many circumstances and evidentiary facts set forth in the special finding which tend to support the conclusion, the chief being that the debtor company was at the time absolutely insolvent and on the verge of suspending business, and that, without the sanction of any other officer or member of the company, the president, knowing the situation, made this sale and others, covering the entire property of the company, to particular creditors for the purpose of preferring them over other creditors. Whether the finding of the court upon this question was according to the preponderance of the evidence is a question which this court cannot consider. Besides the provision in section 1011 of the Revised Statutes that "there shall be no reversal * * * upon a writ of error * * * for any error of fact," it is well settled that under sections 649 and 700 the right of review, when judgment has been rendered upon a special finding, extends only to "the rulings of the court in the progress of the trial," and to "the determination of the sufficiency of the facts proved to support the judgment." The cases on the subject in the Supreme Court and in the circuit courts of appeals are numerous. See Fourth National Bank *v.* City of Belleville, 53 U. S. App., 28; 27 C. C. A., 674; Sunley *v.* Barker, 55 U. S. App., 125; Stanley *v.* Supervisors, 121 U. S., 535; Hathaway *v.* Cambridge Nat. Bank, 134 U. S., 491; St. Louis *v.* Rutz, 138 U. S., 226. In Runkle *v.* Burnham, 153 U. S., 216, it is said that "findings of fact made by the court below are binding here if there be any evidence to support them."

It necessarily follows, and has often been decided, that a mixed question of law and fact cannot be reviewed on a writ of error. Dennistown *v.* Stewart, 18 How., 565; Jewell *v.* Knight, 123 U. S., 426; Smith *v.* Craft, 153 U. S., 436; Burnham *v.* North Chicago Street R'y Co., 46 U. S. App., 670; 23 C. C. A., 677. When the trial is by jury the law part of such mixed questions may be saved for review on exceptions to the rulings of the court (Norris *v.* Jackson, 9 Wall., 125), but if a party sees fit to waive a jury in a case involving a question of that kind, he puts it beyond his power to challenge the court's finding, unless he may chance to be able to do so upon an exception to a ruling during the progress of the trial. For instance, if the issue be negligence, which rarely is resolved into
a pure question of law, a special finding of the ultimate fact
36 either way cannot be overthrown by force of merely evidentiary facts stated in the finding, however strong; and so, here, the finding that the sale was unauthorized and was not ratified cannot be impeached on the strength of the circumstances stated tending to show the contrary.

The sale, made as it was without authority, did not pass title, and the goods were therefore subject to seizure by virtue of the writs of attachment.

Another ground on which the sale was clearly invalid is the finding of the court that the sale was not followed by an open or visible

or notorious change of possession or ownership, unless, as matter of law, the facts stated in the finding constituted sufficient information to the public of the change. The facts so stated were evidentiary only, and, instead of being conclusive of publicity, tended rather to show intentional concealment. They were certainly sufficient, even if we were required to look into the evidence, to support the finding of the ultimate fact. The sale was therefore void under the law of Illinois, which "will not permit the owner of personal property to sell it and still continue in the possession of it." Green *v.* Van Buskirk, 7 Wall., 139; Henry *v.* Locomotive Works, 93 U. S., 664; Martin *v.* Duncan, 156 Ill., 274; Harkness *v.* Russell, 118 U. S., 663; Pullman Car Co. *v.* Pennsylvania, 141 U. S., 18.

It is urged that while the Federal courts follow the rule of the State that a transfer of personal property, where the vender is permitted to remain in possession, is fraudulent and void as to creditors, the Federal courts are not bound to give heed to the opinions of the supreme court of Illinois upon matters of fact, and that what will constitute a sufficient change of possession must necessarily be determined upon the facts of each case. That may be conceded; but the court here having determined the fact against the appellant, whether according to the weight of the evidence or not, the finding, by the authorities already cited, cannot be reviewed.

There are other propositions embraced in the finding which, it is urged, are sufficient to support the judgment rendered, but they need not be considered.

The judgment is affirmed.

37 And afterwards, on the same day, to wit, on the twenty-sixth day of July, 1898, in the October term aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *July* 26, 1898.

Present: Hon. William A. Woods, circuit judge; Hon. John W. Showalter, circuit judge.

Before Hon. William A. Woods, circuit judge; Hon. John W. Showalter, circuit judge; Hon. Romanzo Bunn, district judge.

MICHAEL F. DOOLEY
vs. } 472.
JAMES PEASE.

In error to the circuit court of the United States for the northern district of Illinois, northern division.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of Illinois, northern division, and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

38 At a regular term of the United States circuit court of appeals for the seventh circuit begun and held at the United States court rooms, in the city of Chicago, in said seventh circuit, on Monday, October third, 1898, in the October term, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the one hundred and twenty-third.

And afterwards, to wit, on the twenty-sixth day of May, 1898, in the October term last aforesaid, there was filed in the office of the clerk of this court a writ of error in said entitled cause; which writ of error is in the words and figures following, to wit:

39 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the seventh circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the United States circuit court of appeals, before you or some of you, between Michael P. Dooley, as receiver of the First National Bank of Willimantic, Connecticut, plaintiff in error, and James Pease, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of May, in the year of our Lord one thousand eight hundred and ninety-nine.

Seal of the Supreme Court of the United States.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

40 Allowed, and the writ being applied for by direction of the Comptroller of the Currency of the United States, to operate as a supersedeas without bond.

Dated May 15, 1899.

HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

41 UNITED STATES OF AMERICA, }
Seventh Judicial Circuit. }

In obedience to the within writ I herewith transmit to the Supreme Court of the United States a true and complete transcript of the record and proceedings in the United States circuit court of appeals for the seventh circuit, in the foregoing-entitled cause, this fifth day of April, 1899.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

42 [Endorsed:] U. S. circuit court of appeals, 7th circuit. Michael F. Dooley, as rec'r, etc., plaintiff in error, against James Pease, defendant. Writ of error. Copy of the within writ on file in clerk's office. Filed May 26, 1899. Edward M. Holloway, clerk.

43 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 40, inclusive, contain a true copy of the transcript of the record and proceedings in the United States circuit court of appeals for the seventh circuit in the case of Michael F. Dooley, receiver of the First National Bank of Willimantic, Connecticut, *vs.* James Pease, No. 472, October term, 1899, as the same remains upon the files and records of the United States circuit court of appeals for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this fifth day of July, A. D. 1899.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

44 UNITED STATES OF AMERICA, *ss:*

To James Pease, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the seventh circuit, wherein Michael F. Dooley, as receiver of the First National Bank of Willimantic, Connecticut, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the

judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry B. Brown, associate justice of the Supreme Court of the United States, this 15th day of May, 1899.

HENRY B. BROWN,
Associate Justice of the Supreme Court of the United States.

Service of the above citation accepted this 26th day of May, A. D. 1899.

GREEN, HONORÉ & PETERS,
Attorneys for James Pease, Defendant in Error.

45 [Endorsed:] Michael F. Dooley, as rec'r, plaintiff in error, against James Pease, defendant. Citation. Filed May 26, 1899. Edward M. Holloway, clerk.

Endorsed on cover: File No. 17,462. U. S. C. C. of appeals, 7th circuit. Term No., 348. Michael F. Dooley, as receiver of the 1st National Bank of Willimantic, Connecticut, plaintiff in error, *vs.* James Pease. Filed July 14, 1899.